

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,
Plaintiff,

-against-

JOHN DOE,

Defendant.
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98 CR 1101 (ILG)

FILED UNDER SEAL

**DECLARATION OF BRIAN A. HERMAN
IN SUPPORT OF PERMANENT INJUNCTION**

BRIAN A. HERMAN declares as follows:

1. I am member of the law firm of Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, New York, 10178, counsel for John Doe.
2. I make this declaration in support of Mr. Doe's application for an Order (i) directing the return of the Documents, as set forth in Mr. Doe's Memorandum of Law In Support of Permanent Injunction submitted herewith; and (ii) permanently enjoining the dissemination of the sealed information contained in the Documents.
3. Attached hereto as Exhibit 1 is a true and correct copy of the transcript of the hearing held before the Court on June 21, 2010 in the matter of *United States of America v. John Doe*, case number 98 CR 1101.
4. Attached hereto as Exhibit 2 is a true and correct copy of a webpage from the Electronic Document Filing System ("ECF"), available at the address "https://ecf.nyed.uscourts.gov/cgi-bin/iquery.pl". The webpage was printed after a query for case number "98-CR-1101" was executed. The search was run, and the webpage was printed, on June 14, 2010 at approximately 9:54 a.m.

5. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the complaint filed on May 10, 2010 in the United States District Court for Southern District of New York in the matter captioned *Kriss et al. v. Bayrock Group LLC et al.*, case number 10 CIV 3959 (the “SDNY Complaint”). The SDNY Complaint was received into evidence as Petitioner’s Exhibit 11.

6. Attached hereto as Exhibit 4 is a true and correct copy of the Notice of Cross-Motion and Declaration of Thomas W. Hyland in Support of Cross-Motion and in Opposition to Main Motion, and Exhibit A thereto (the Declaration of Fred M. Oberlander), filed under seal on June 7, 2010 in the present matter on behalf of Respondent Oberlander.

7. Attached hereto as Exhibit 5 is a true and correct copy of the complaint filed on or about February 12, 2009 on behalf of Plaintiff Joshua Bernstein in the Supreme Court of the State of New York, County of Westchester, in the matter captioned *Joshua Bernstein v. Bayrock Group LLP*, Index No. 02579-09. Please note that the complaint appears to be missing a signature page.

8. Attached hereto as Exhibit 6 is a true and correct copy of the Final Order issued on February 19, 2010 by the Court of Chancery of the State of Delaware in the matter captioned *Jody Kriss et al. v. Bayrock Group LLP et al.*, C.A. No. 4154-VCS.

9. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the transcript of the deposition of Julius R. Schwarz, deposed on March 5, 2010, in the matter captioned *Joshua Bernstein v. Bayrock Group LLC*, Index No. 02579-09.

10. Attached hereto as Exhibit 8 is a true and correct copy of excerpts from the transcript of the deposition of Joshua Bernstein, deposed on March 8, 2010, in the matter captioned *Joshua Bernstein v. Bayrock Group LLC*, Index No. 02579-09.

11. Attached hereto as Exhibit 9 is a true and correct copy of a letter dated May 24, 2010 from David Scharf, Esq. of the law firm Morrison Cohen LLP to the Honorable Naomi Reice Buchwald regarding *Kriss et al. v. Bayrock Group LLC et al.*, case number 10 CIV 3959.

12. Attached hereto as Exhibit 10 is a true and correct copy of an unexecuted Ex Parte Motion to File Complaint Under Seal and unexecuted Order to Seal Complaint, which were prepared by Frederick M. Oberlander, Esq. in connection with *Kriss et al. v. Bayrock Group LLC et al.* and submitted to Part I Judge Kimba Wood on or about May 10, 2010.

13. Attached hereto as Exhibit 11 is a true and correct of a blank form "Application for Leave to File Document Under Seal" for use in the Eastern District of New York.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: New York, New York
July 1, 2010

Respectfully submitted,



Brian A. Herman